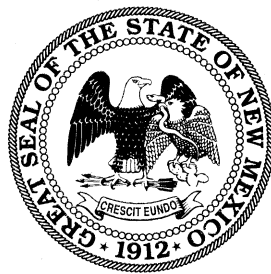


STATE OF NEW MEXICO  
PUBLIC REGULATION COMMISSION  
INSURANCE DIVISION



**REQUEST FOR PROPOSALS**  
**FOR**  
**CUSTODIAN TO ACT AS DEPOSITORY**  
**RFP NO. 430-12-41100-01**

**DATE ISSUED: March 15, 2012**

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## **I. INTRODUCTION**

### **A. PURPOSE**

The Insurance Division of the Public Regulation Commission is requesting proposals from any solvent trust company or other solvent financial institution having trust powers, and with offices located in New Mexico, qualified to act as depository for securities pledged by insurers and service contract providers.

Insurance companies (“Insurers”) are required under NMSA 1978, §§ 59A-5-18 through 59A-5-20 and 59A-10-1 through 59A-10-19 to deposit securities or other property with the New Mexico State Treasurer (“Trustee”) and/or as required by the Insurance Code with or through the Superintendent. Under Section 59A-10-5 NMSA 1978, the New Mexico State Treasurer is responsible for designating a solvent trust company or solvent financial institution having trust powers as a depository to hold general, special or excess deposits of an insurer, but PRC will control and administer the deposits as well as this procurement.

### **B. SUMMARY SCOPE OF WORK**

The scope of work shall consist of acting as a depository for securities made by insurers and service contract providers under the New Mexico Insurance Code, including all items set forth in Appendix B.

### **C. SCOPE OF PROCUREMENT**

The initial contract shall begin on July 1, 2012 or as soon as possible thereafter and end on June 30, 2013. The Insurance Division of the PRC reserves the option of renewing the initial contract for three additional one-year terms. In no case will the contract, including all renewals thereof, exceed a total of four years in duration.

### **D. PROCUREMENT MANAGER**

The Agency has designated a Procurement Manager responsible for this procurement. The name and contact information for the Procurement Manager is listed below (all deliveries should be sent to this address):

Ashley Hernandez, Federal Ombudsman  
NMPRC, Insurance Division  
1120 Paseo De Peralta  
Santa Fe, NM 87501

[AshleyD.Hernandez@state.nm.us](mailto:AshleyD.Hernandez@state.nm.us)

Telephone: (505) 827-4465

Fax: (505) 476-0326

Any inquiries or requests regarding this procurement should be submitted to the Procurement Manager in writing. Offerors may contact **ONLY** the Procurement Manager regarding the procurement.

#### E. DEFINITION OF TERMINOLOGY

This section contains definitions that are used throughout this procurement document, including appropriate abbreviations.

“Agency” means the New Mexico Public Regulation Commission, Insurance Division

“Contract” means an agreement for custodian bank for depository services.

“Contractor” means the successful Offeror.

“Determination” means the written documentation of a decision of a procurement manager, including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

“Desirable” or “discretionary” items or factors are identified by the terms “may,” “can,” “should,” “preferably,” or “prefers.”

“DFA” means the Department of Finance and Administration for the State of New Mexico.

“Evaluation Committee” means a body appointed by the Agency management to perform the evaluation of Offeror proposals.

“Evaluation Committee Report” means a report prepared by the Procurement Manager and the Evaluation Committee for submission to DFA for contract award that contains all written determinations resulting from the conduct of a procurement requiring the evaluation of competitive sealed proposals.

“Mandatory” items or factors are identified by the terms “must,” “shall,” “will,” “is required,” or “are required.” Failure to meet a mandatory item or factor will result in the rejection of the Offeror’s proposal.

“Offeror” is any person, corporation, or partnership that chooses to submit a proposal.

“PRC” is the New Mexico Public Regulation Commission.

“Procurement Manager” means the person or designee authorized by the Agency to manage or administer a procurement requiring the evaluation of competitive sealed proposals.

“Request for Proposals” or “RFP” means all documents, including those attached or incorporated by reference, used for soliciting proposals.

“Responsible Offeror” means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that their financial resources, production or service facilities, personnel, service reputation, and experience are adequate to make satisfactory delivery of the services described in the proposal.

“Responsive Offer” or “Responsive Proposal” means an offer or proposal that conforms in all material respects to the requirements set forth in the Request for Proposals. Material respects of a Request for Proposals include, but are not limited to, price, quality, quantity, or delivery requirements.

“STO” means the New Mexico State Treasurer’s Office.

“Superintendent” means the Superintendent of Insurance Division of the New Mexico Public Regulation Commission.

## II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule for the procurement, describes the major procurement events, and specifies general requirements for the procurement.

### A. SEQUENCE OF EVENTS

The Procurement Manager will make every effort to adhere to the following schedule:

	<u>Action</u>	<u>Responsibility</u>	<u>Date</u>
1.	Issuance of RFP	Agency	03-15-12
2.	Distribution List Response (Appendix A Form)	Potential Offerors	03-29-12
3.	Deadline to Submit Written Questions	Potential Offerors	04-03-12
4.	Response to Written Questions/RFP Amendments	Agency	04-06-12
5.	Submission of Proposals	Offerors	04-17-12
6.	Review of Proposals	Evaluation Committee	04-18-12 Through 05-02-12
7.	Selection of Finalists	Evaluation Committee	05-03-12
8.	Oral Presentations/	Offerors	05-08-12
9.	Best and Final Offers	Offerors	05-09-12
10.	Selection of Contractor	Evaluation Committee	05-10-12
11.	Contract Negotiations	Evaluation Committee/Offeror	05-10-12
12.	Contract Award	Agency	05-14-12
13.	Protest Deadline	Offeror	05-29-12

## B. EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the sequence of events shown in Section II, Paragraph A.

### 1. Issuance of RFP

This RFP is being issued by the Insurance Division of the PRC on March 15, 2012. In the interest of making it easier for Offerors to prepare responses, Offerors can download the RFP in electronic format by accessing either the PRC website at [www.nmprc.state.nm.us](http://www.nmprc.state.nm.us) or the STO website at [www.stonm.gov](http://www.stonm.gov). Additional copies of the RFP can be obtained from the Procurement Manager.

### 2. Distribution List Response

Potential Offerors should hand-deliver to the Procurement Manager or return by fax, PDF or by registered or certified mail the “Acknowledgement of Receipt Form” that accompanies this document (see Appendix A) to have their organization placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated, and returned by **4:00 PM MOUNTAIN DAYLIGHT SAVING TIME ON March 29, 2012.**

The procurement distribution list will be used for the distribution of responses to Offeror questions and any RFP amendments.

Failure to return this form shall constitute a presumption of receipt and rejection of the RFP, and the potential Offeror shall not be included on the distribution list.

Offerors who have not provided an “Acknowledgement of Receipt Form” can nonetheless respond to this RFP.

### 3. Deadline to Submit Written Questions

Potential Offerors may submit written questions via email, fax, or other written form as to the intent or clarity of this RFP until close of business on April 3, 2012. **All written questions must be addressed to the Procurement Manager.**

### 4. Response to Written Questions/RFP Amendments

Responses to all written or email questions and any RFP amendments will be distributed by email on April 6, 2012, to all potential Offerors whose organizations’ names appear on the procurement distribution list.



Additional written or email requests for clarification of distributed answers and/or amendments must be received by the Procurement Manager no later than seven (7) days after the answers and/or amendments were issued.

5. Submission of Proposal

All Offeror proposals must be received for review and evaluation by the Procurement Manager no later than **4:00 PM MOUNTAIN DAYLIGHT SAVINGS TIME ON April 17, 2012**. Proposals received after this deadline will not be accepted. The date and time of receipt will be recorded on each proposal. Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section I, Paragraph D. Proposals must be labeled on the outside of the package to clearly indicate that they are in response to the Request for Proposals for Custodian to act as Depository. **PROPOSALS SUBMITTED BY FAX OR BY E-MAIL WILL NOT BE ACCEPTED.**

A public log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to Section 13-1-116 NMSA 1978, the contents of any proposal shall not be disclosed to competing Offerors prior to contract award.

6. Review of Proposals

The review of proposals will be performed by the Evaluation Committee. This process will take place on or about April 18, 2012 through May 2, 2012. During this time, the Procurement Manager may, at his or her option, initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. Discussions **shall not** be initiated by the Offerors.

7. Selection of Finalists

The Evaluation Committee will select and the Procurement Manager will notify the Finalist Offerors on **May 3, 2012**. Only finalists will be invited to participate in the subsequent steps of the procurement. The schedule for the oral presentations will be determined at this time.

8. Oral Presentations/Demonstrations

Finalist Offerors may be required to present their proposals to the Evaluation Committee. Presentations will be held on May 8, 2012. The Procurement Manager will schedule the time for each finalist Offeror's

presentation. All Offeror presentations will be held at the Agency offices in Santa Fe, New Mexico, depending on availability, or at another site that may be designated by the Procurement Manager. Offerors should be prepared to explain verbally their understanding of this procurement and be prepared to answer questions concerning it. Each presentation should take approximately one hour.

9. Best and Final Offers from Finalists

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining Best and Final Offers by May 9, 2012. Best and Final Offers may also be amended and provided at the Finalists Offerors' oral presentations.

10. Selection of Contractor

The Evaluation Committee will make its recommendation on May 10, 2012, for approval prior to entering into contract negotiations. This date is subject to change at the discretion of the Evaluation Committee.

11. Contract Negotiations

If approval is granted, the contract will be negotiated with the most advantageous Offeror by May 10, 2012. In the event that mutually agreeable terms cannot be reached within the time specified, the Evaluation Committee reserves the right to finalize a contract with the next most advantageous Offeror without undertaking a new procurement process.

12. Contract Award

Upon approval of the negotiated contract, the contract will be awarded on May 14, 2012. This date is subject to change at the discretion of the Evaluation Committee

The contract shall be awarded to the Offeror whose proposal is most advantageous, taking into consideration the evaluation factors set forth in the RFP. The most advantageous proposal may or may not have received the most points.

The award is subject to appropriate state approvals.

13. Protest Deadline

Any protest by an Offeror must be timely and in conformance with Section 13-1-172 NMSA 1978 and applicable procurement regulations.

The fifteen (15) day protest period for responsive Offerors shall begin on the day following the contract award and will end at close of business on May 29, 2012, unless the contract award date is changed pursuant to paragraph 12. Under NMAC 1.4.1.82, protests must be addressed to the central purchasing office controlling and administering this procurement, in this case the PRC. Protests received after the 15 day deadline will be deemed not valid and will not be accepted. Protests must be written and include the name and address of the protester and the RFP number. It must also contain a statement of grounds for protest including appropriate supporting exhibits, and it must specify the ruling requested from the Insurance Division, PRC. The protest must be delivered to:

Patrick Lopez, Legal Division Director  
Public Regulation Commission  
P.O. Box 1269  
Santa Fe, NM 87504-1269

#### C. GENERAL REQUIREMENTS

This procurement will be conducted in accordance with the State of New Mexico Purchasing Division Procurement Code Regulations 1.4.1 NMAC.

##### 1. Acceptance of Conditions Governing the Procurement

Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the letter of transmittal. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section V. of this RFP.

##### 2. Incurring Cost

Any cost incurred by the Offeror in preparation, transmittal, or presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror.

##### 3. Prime Contractor Responsibility

Any contract that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of the contract with PRC.

##### 4. Subcontractors

All work that may result from this procurement must be performed by the successful Offeror. Subcontracting of any part of this contract must be addressed in detail in the Offeror's proposal. The Evaluation Committee

reserves the right to determine if the subcontracting is appropriate and whether it is in the best interest of the state.

5. Amended Proposals

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. Agency personnel will not merge, collate, or assemble proposal materials.

6. Offeror's Rights to Withdraw Proposal

An Offeror will be allowed to withdraw the proposal at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request signed by the Offeror's duly authorized representative addressed to the Procurement Manager. The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

7. Proposal Offer Firm

Responses to this RFP, including proposal prices, will be considered firm for ninety (90) days after the due date for receipt of proposals.

8. Disclosure of Proposal Contents

The proposals will be kept confidential until a contract is awarded. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for the material that is proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements.

Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the nonconfidential portion of the proposal. Confidential data is normally restricted to confidential financial information concerning the Offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, 57-3A-1 to 57-3A-7 NMSA 1978. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.

If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, Agency Counsel shall examine the Offeror's request and make a written determination that specifies

which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

9. No Obligation

This procurement in no manner obligates the State of New Mexico or any of its agencies to services offered until a valid written contract is approved by the other appropriate authorities.

10. Termination

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the Agency determines such action to be in the best interest of the State of New Mexico.

11. Sufficient Appropriation and Authorizations

Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such termination will be effected by sending written notice to the contractor. The Agency's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

12. Legal Review

The Agency requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror concerns must be promptly brought to the attention of the Procurement Manager.

13. Governing Law

This procurement and any agreement with Offerors that may result shall be governed by the laws of the State of New Mexico.

14. Basis for Proposal

Only information supplied in writing through the Procurement Manager or in this RFP should be used as the basis for the preparation of Offeror proposals.

15. Contract Terms and Conditions

The contract between the Agency and a contractor will follow the format specified by the Agency and contain the terms and conditions set forth in

Section II, Paragraph C and Section VI of this RFP. However, the Agency reserves the right to negotiate with a successful Offeror provisions in addition to those contained in that Agreement and in this RFP. The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into the contract.

Should an Offeror object to any of the Agency's terms and conditions, as contained in Section II, Paragraph C and Section VI, that Offeror can propose specific alternative language. The alternative language must be acknowledged in writing by the Agency as being acceptable. General references to the Offeror's terms and conditions or attempts at complete substitutions are not acceptable to the Agency and will result in disqualification of the Offeror's proposal.

Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

16. Offeror's Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and conditions that it expects to have included in a contract negotiated with the Agency.

17. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between the Agency and the selected Offeror and shall not be deemed an opportunity to amend the Offeror's proposal.

18. Offeror Qualifications

The Evaluation Committee may make such investigations as necessary to determine the ability of the Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any Offeror who is not a responsible Offeror or fails to submit a responsive offer as defined in Sections 13-1-83 and 13-1-85 NMSA 1978.

19. Right to Waive Minor Irregularities

The Evaluation Committee also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

20. Change in Contractor Representatives

The Agency reserves the right to require a change in contractor representatives if the assigned representatives are not, in the opinion of the Agency, meeting its needs adequately.

21. Agency Rights

The Agency reserves the right to accept all or a portion of an Offeror's proposal.

22. Ownership of Proposals

All documents submitted in response to the RFP shall be returned to the Offerors after the expiration of the protest period with the following exception. One complete copy of the selected Offeror's proposal, including the Best and Final Offer if one was submitted, shall be placed into the procurement file. Those documents will become the property of the Agency and the State of New Mexico.

### **III. RESPONSE FORMAT AND ORGANIZATION**

#### **A. NUMBER OF RESPONSES**

Each Offeror may submit only one (1) proposal.

#### **B. NUMBER OF COPIES**

Offerors shall provide the following:

Five (5) identical copies of the proposal.

Proposals shall be sent to the locations specified in Section I, Paragraph D on or before the closing date and time for receipt of proposals.

#### **C. PROPOSAL FORMAT**

All proposals must be printed on standard 8½" x 11" paper.

#### **D. PROPOSAL ORGANIZATION**

Material provided in the Offeror's proposal shall follow the same order as found in Section IV, Requirements, below.



## IV. REQUIREMENTS

### A. LETTER OF TRANSMITTAL

The Letter of Transmittal MUST:

- a) identify the submitting organization;
- b) identify the name and title of the person authorized by the organization to contractually obligate the organization;
- c) identify the name title and telephone number of the person authorized to negotiate the contract on behalf of the organization;
- d) identify the names, titles and telephone numbers of persons to be contacted for clarification;
- e) explicitly indicate acceptance of the Conditions Governing the Procurement stated in Section II, Paragraph C.1;
- f) include a statement from the organization agreeing to provide all the services in the Summary Scope of Work and to adhere to all requirements, specifications, terms, and contract provisions set forth in this RFP;
- g) acknowledge receipt of any and all amendments to this RFP; and
- h) be signed by the person authorized to contractually obligate the organization.

### B. MANDATORY SPECIFICATIONS

#### 1. Minimum Qualifications

The proposal must address the following areas in order to meet the minimum qualifications for consideration.

- a) the Offeror must be a solvent trust company or other solvent financial institution having trust powers, with offices located in the State of New Mexico. See NMSA 1978, § 59A-10-5 (1984);
- b) the Offeror must agree to the terms and warranties contained in Section VI, Contract Provisions, and must be capable of providing the required services; and
- c) the Offeror must warrant that it currently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required under any professional services agreement entered

into by the State Treasurer, the Superintendent of Insurance, Public Regulation Commission, the Trustee and the Offeror.

## 2. Corporate Experience

Offerors must submit a statement of relevant corporate experience, including experience of subcontractors, if applicable. The documentation must thoroughly describe how the Offeror has supplied expertise for similar contracts and work related to maintaining custodial deposits.

Offerors should include in their proposals documentation describing the extent of their experience and expertise as a custodial depository.

Offerors should include in their proposals documentation of their systems capability and reporting functions.

Offerors should include in their proposal copies of appropriate professional certifications.

Offerors should include in their proposals samples of work performed for previous clients.

## 3. Corporate References

Proposals must include three (3) external client references from clients who received similar services. In addition, three (3) references must be submitted for each proposed subcontractor. The minimum information that must be provided about each reference is:

- a. Name of individual or company to whom services were provided
- b. Address of individual or company
- c. Name of contact person
- d. Telephone number of contact person
- e. Type of services provided and dates services were provided

## 4. Offeror Staff Experience

Offerors must submit resumes of all proposed professional staff members who will be performing services under the contract. Experience narratives shall be attached that describe the specific relevant experience of the staff members in relation to the role that member will perform for this contract. The narrative(s) must include the name of the individual(s) proposed and should include a thorough description of their education, knowledge, and relevant experience as well as certifications or other professional credentials.

## 5. Proposed Staff References

One external client reference for each proposed staff member must be provided. The minimum information that must be provided about each reference is:

- a. Name of individual or company services reference is provided for
- b. Address of individual or company
- c. Name of contact person
- d. Telephone number of contact person
- e. Type of services provided and dates services were provided

#### 6. Project Plan

Offerors must submit a thorough project plan as part of the proposal. At a minimum, the project plan must include a milestone chart including tasks to be performed, the time frame and proposed staff member designated for the completion of each task.

#### 7. Cost

Offerors must provide a total compensation and reimbursement fee of not more than 0.2% that they will bill to Insurers and Service Contract Providers in their proposal.

#### 13.2.4.16 NMAC states:

“Total compensation and reimbursement to be received by depository for its services as described in this rule shall be an annual fee equal to two-tenths of one percent (0.2[%]) of the face amount of securities held by depository, plus New Mexico gross receipts tax as agreed upon by the superintendent and the state treasurer, or such lesser amount as may be agreed between depository and an individual insurer.”

In addition, 13.2.4.17 NMAC states:

- A. Depository may, by agreement between itself and an insurer, accept such other or further additional duties to an insurer as may be agreed between them, provided that no provision of any such agreement shall be effective to impair, diminish or otherwise affect any right or power of the superintendent or the state of New Mexico under this rule or applicable law.
- B. All compensation or reimbursement due to depository shall be the sole liability and responsibility of insurer, and no claim shall be made upon the Superintendent or the state of New Mexico, either by the depository or by insurer or service contract provider, for collection or payment of any such amounts.

In light of the foregoing administrative rule, the Agency seeks proposals with competitive custodial fees. Fees cannot be changed during the term of the contract, including all extensions and renewals. Any changes that result in higher fees are void, and could result in a new procurement process at the option of the Agency.

## 8. Oral Presentation

Finalist Offerors will be required to present their proposals to the Evaluation Committee. Offerors should be prepared to explain verbally their understanding of this procurement and be prepared to answer questions concerning it. Each presentation with questions and responses should take no more than one hour.

## **V. EVALUATION**

### **A. Evaluation Point Summary**

The following is a summary of evaluation factors with point value assigned to each. These, along with the general requirements, will be used in the evaluation of Offeror proposals.

FACTOR	POINTS AVAILABLE
1. Corporate Experience	100
2. Financial Performance	100
3. Systems Capability and Reporting	150
4. Proposed Staff Experience	150
5. Improvements in Financial Performance	50
6. Project Plan	50
7. Cost	300
8. Customer Service	<u>100</u>
TOTAL	1,000

### **B. Evaluation Factors**

Points will be awarded on the basis of the following evaluation factors:

1. Corporate Experience as a commercial depository in New Mexico and as a trust company or financial institution having trust powers (100 points)

The corporate experience of the Offeror including all subcontractors will be evaluated based upon documented experience on depository projects and engagements and includes consideration of years in depository business, experience of depository personnel, stability of organization and people, turnover, references and number of depositors.

2. Financial Performance (100 points)

Points for financial performance will be awarded based upon the State Board of Finance's Collateral Policy Risk Assessment as well as other relevant ratios as they pertain to institutional performance.

3. Systems Capability and Reporting (150 points)

Points will be awarded based upon an evaluation of the offeror's computer software and management for effective and efficient operation of the custodian's duties and the Offeror's systems for providing reports required by the Superintendent, the State Treasurer, insurers and service contract providers. Software will be evaluated for compliance with Agency needs.

4. Staff Experience (150 points)

Points for staff experience will be awarded based upon an evaluation of each staff member's experience as it relates to their role and the needs of this contract. Effective communication, technical knowledge, experience with similar contracts and the quality of the responses to questions will be other criteria for the evaluation.

5. Improvement in Financial Performance (50 points)

Points for improvement in financial performance will be awarded based upon information for calendar years ending 2009 and 2010 with respect to the State Board of Finance's Collateral Policy Risk Assessment, as well as other relevant ratios as they pertain to institutional performance.

6. Project Plan (50 points)

Points will be awarded for this evaluation factor based upon the quality and thoroughness of the project plan.

7. Cost (300 points)

**Bids must be provided in whole basis points. A bid provided with a fraction of a basis point will be rounded appropriately e.g a bid for 17.4 basis points will be rounded to 17 basis points, and a bid for 17.5 basis points will be rounded up to 18 basis points.**

The evaluation of each Offeror's cost proposal will be conducted using the following scale:

<u>Lowest Responsive i.e. best offer</u>	<u>300 points</u>
<u>Second best responsive bid</u>	<u>250 points</u>
<u>Third best responsive bid</u>	<u>200 points</u>
<u>Fourth best responsive bid</u>	<u>150 points</u>
<u>Remaining bids</u>	<u>100 points</u>

Bids for the same cost will receive the same score on the above scale.

8. Customer Service (100 points)

Points will be awarded for local trust presence, local service and convenience.

**C. Evaluation Process**

The evaluation process will follow the steps listed below:

1. All offeror proposals will be reviewed for compliance with the mandatory requirements stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the offeror for clarification of the response as specified in Section II, Paragraph B.7.
3. The Evaluation Committee may use other sources of information to perform the evaluation as specified in Section II, Paragraph C.18.
4. 4. Responsive proposals will be evaluated on the factors in Section V that have been assigned a point value. The responsible offerors with the highest scores will be selected as finalist offerors based upon the proposals submitted. Finalist offerors who are asked or choose to submit revised proposals for the purpose of obtaining best and final offers will have their points recalculated accordingly. Points awarded from the oral presentations will be added to the previously assigned points to attain final scores. The responsible offeror whose proposal is most advantageous to the Agency, taking into consideration the evaluation factors in Section V, will be recommended for contract award as specified in Section II, Paragraph B.12. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

## VI. CONTRACT PROVISIONS

In addition to the Scope of Procurement described in Section I, Paragraph C, the contractual agreement between the Agency and the successful Offeror shall contain substantially the following terms and conditions.

STATE OF NEW MEXICO  
PUBLIC REGULATION COMMISSION  
PROFESSIONAL SERVICES CONTRACT # \_\_\_\_\_

THIS AGREEMENT is made and entered into by and between the State of New Mexico, Public Regulation Commission, Insurance Division, hereinafter referred to as the "Agency," the New Mexico State Treasurer, hereinafter referred to as the "Trustee" and [insert name] **CONTRACTOR**, hereinafter referred to as the "Contractor".

WHEREAS, Insurance companies ("Insurers") transacting business in New Mexico are required under NMSA 1978, §§ 59A-5-18 through 59A-5-20 and §§ 59A-10-1 through 59A-10-19 (the "Insurance Code") to deposit securities or other property with the Trustee and/or the Superintendent. The Trustee and the Superintendent have authority under the Insurance Code to designate depositories with respect to deposits made by insurers under the Insurance Code. The Trustee and the Superintendent want to designate and engage the Custodian to act as depository with respect to the deposits made by Insurers under the Insurance Code ("Custodial Accounts").

WHEREAS, Service Contract Providers ("Providers") in New Mexico are required under the Service Contract Regulation Act (NMSA 1978, § 59A-58-6) to maintain a deposit with the Superintendent. Providers may choose to deposit securities of the type eligible for deposit by insurers with the Superintendent to fulfill this requirement. The Custodian will maintain deposits by insurers for the Superintendent. The Superintendent, therefore, wants to designate and engage the Custodian to also act as depository and maintain Custodial Accounts for Providers who choose to deposit securities.

### IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

#### 1. Scope of Work.

The Contractor shall perform the work outlined in the Scope of Work as follows:

The Custodian is designated as depository for Insurers with respect to securities and other properties in the Custodial Accounts. The Custodian has authority to make purchases, sales, and deliveries of securities and to otherwise deal with such securities as the Superintendent or the Trustee may direct.

The Custodian is designated as the depository for Service Contract Providers ("Providers") who choose to enter into separate Provider Custodial Account Agreements with the Custodian for the deposit of securities of the type eligible for deposit by insurers under the New Mexico Insurance



Code. The Custodian shall perform the following services, which shall also be terms of each Provider Custodial Account Agreement.

The Custodian is authorized and directed to:

- A. Act as depository with respect to securities and other properties in the Custodial Accounts.
- B. Make purchases, sales, and deliveries of securities and otherwise deal with such securities as the Superintendent may direct.
- C. Collect interest and other income on the securities, dispose of the interest and other income as directed by Insurers or Providers, provide the Superintendent with information regarding interest collections and payments, including addresses used by the Custodian to distribute interest payments, and provide information regarding past interest payments at the request of Insurers or the Superintendent.
- D. Provide to the Superintendent and Insurers or Providers the reports required by the Insurance Code and Regulations, including a monthly report containing a full description of the accounts held at each month's end, each Insurer's account number and company code, full descriptions of the securities held, and current market values and current par values of the securities held.
- E. Provide the Superintendent, the Trustee, and the State Auditor with all reports and records as may be reasonable or necessary for the performance of their duties under the law.
- F. Hold securities according to the provisions of the Insurance Code and Regulations, use descriptions/references for all securities as set by the Superintendent, ensure that all accounts reflect the Insurer's New Mexico Company Code and account number or the Providers New Mexico Registration Number and account number, and provide the Superintendent with Standard and Poor's Ratings, Moody's Rating, call information, and current market value within one day of a request for such information.
- G. Execute on behalf of Insurers, Providers or the Superintendent all declarations, affidavits and certificates of ownership now or hereafter required in collecting income or principal payments.
- H. Provide Insurers or Providers with written confirmation, which has been approved by the Superintendent, of the change in custodian bank and of the current account balance at the beginning of service by the Custodian.
- I. Provide Insurers or Providers with transaction reports and lists of assets in Custodial Accounts annually and other available information regarding their respective accounts upon request.

- J. Process mail deliveries on a daily basis.
- K. Maintain an adequate customer service staff for all custodial accounts (i.e. more than one individual associated with the Custodian shall be familiar with the custodial accounts and processes necessary to keep them and, to the extent possible, individuals who specialize in investments shall be assigned to work with the custodial accounts).
- L. Provide the Superintendent with computers to access Contractor's custodial accounts online, including the ability to view and print account information, and appoint a qualified individual to manage any necessary computer conversion operations as well as day-to-day computer-related issues.
- M. Indemnify the Superintendent and the State Treasurer for any and all loss, damage, cost, expenses (including legal fees and expenses), and liability resulting from errors, omissions, fraud, embezzlement, theft, negligence, or neglect by Custodian, its employees, officers, servicers or agents and directors, in the performance of services relating to the custodial accounts. (The Custodian does not undertake to furnish investment advice with respect to any purchase or sale of securities held in Custodial Accounts. In reporting to the Superintendent the fair market values of securities held, the Custodian shall use its best efforts in obtaining, but does not warrant, the accuracy of values of securities included in any report.)
- N. Release securities or proceeds from a custodial account only upon written order signed by the Superintendent or his designee, and deliver securities or proceeds withdrawn from a Custodial Account pursuant to the instructions of the Insurer or Provider.
- O. Bill and collect custodial fees from Insurers as authorized by the Insurance Code and Regulations.
- P. Bill and collect custodial fees from Providers as provided in the Provider Custodial Account Agreements.

Performance Measures, default by Contractor – Contractor shall substantially perform the Performance Measures set forth in **Attachment 1**. In the event the Contractor fails to obtain the results described in **Attachment 1**, the Agency may provide written notice to the Contractor of the default and specify a reasonable period of time in which the Contractor shall advise the Agency of specific steps that it will take to achieve these results in the future and the timetable for implementation. Nothing in this subparagraph shall be construed to prevent the Agency from exercising its right pursuant to Paragraph 4 below.

2. Compensation.

[To be determined]

3. Term.

THIS AGREEMENT SHALL BECOME EFFECTIVE ON July 1, 2012. This Agreement shall terminate on June 30, 2013, unless terminated pursuant to paragraph 4, infra, or paragraph 5. The Agency reserves the right to renew the initial contract for three additional one-year terms. In accordance with Section 13-1-150 NMSA 1978, no contract term, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. Termination.

A. Termination

This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least 30 days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. This Agreement may be terminated immediately upon written notice to the Contractor, if the Contractor becomes unable to perform the services contracted for, as determined by the Agency or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

B. Termination Management

Immediately upon receipt by either the Agency or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and client records generated under this Agreement. Any non-expendable personal property or equipment purchased by the Contractor with contract funds shall become the property of the Agency upon termination. On the date the notice of termination is received, the Contractor shall furnish to the Agency a complete, detailed inventory of non-expendable personal property purchased with funds provided under the existing and previous Agency agreements with the Contractor. The property listed in the inventory report shall include client records and a final closing of the financial

records and books of accounts which were required to be kept by the Contractor under the paragraphs of this Agreement regarding financial records. Upon completion of delivery of the inventory, all Agency property, records, and books of account required to be delivered to the Agency, the Contractor may retrieve its computers, printers, hardware, and software, that were required to be provided under paragraph 1.L of this agreement.

5. Appropriations and Authorizations

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Agency to the Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

6. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.

7. Assignment.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Agency.

8. Subcontracting.

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Agency. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Procuring Agency.

9. Release.

The Contractor's acceptance of final payment of the amount due under this Agreement shall operate as a release of the Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

10. Confidentiality.

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Agency.

11. Product of Service -- Copyright.

All materials developed or acquired by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the Agency no later than the termination date of this Agreement. Nothing produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

12. Conflict of Interest.

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with Section 10-16-4.3 NMSA 1978, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Agency employee while such employee was or is employed by the Agency and participating directly or indirectly in the Agency's contracting process;

2) this Agreement complies with Section 10-16-7(A) NMSA 1978 because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given

as required by Section 10-16-7(A) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;

3) in accordance with Section 10-16-8(A) NMSA 1978, (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Agency's making this Agreement;

4) this Agreement complies with Section 10-16-9(A) NMSA 1978 because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by Section 10-16-9(A) NMSA 1978, this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with Section 10-16-13 NMSA 1978, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with Section 10-16-3 and Section 10-16-13.3 NMSA 1978, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Agency.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Agency if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Agency and notwithstanding anything in the Agreement to the contrary, the Agency may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

13. Amendment.

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto.

14. Merger.

This Agreement incorporates all the agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. Penalties.

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

16. Equal Opportunity Compliance.

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, or, if the employer has fifty or more employees, spousal affiliation, or, if the employer has fifteen or more employees, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

17. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement.

18. Workers Compensation.

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Agency.

19. Records and Financial Audit.

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the Department of Finance and Administration and the State Auditor. The Agency shall have the right to

audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments

20. Indemnification.

The Contractor shall defend, indemnify and hold harmless the Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

21. New Mexico Employees Health Coverage

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information:  
<http://insurenwnewmexico.state.nm.us/>.

22. Employee Pay Equity Reporting

Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If contractor has (250) or more



employees contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract, whichever comes first. Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90 days) of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor will submit the required report, for each such subcontractor, within ninety (90 days) of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though contractor itself may not meet the size requirement for reporting and be required to report itself. Notwithstanding the foregoing, if this Contract was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

23. Invalid Term or Condition.

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

24. Enforcement of Agreement

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

25. Notices.

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Agency: Patrick Lopez, Legal Division Director  
Public Regulation Commission,  
P.O. Box 1269  
Santa Fe, NM 87504-1269

To the Contractor: [insert name, address and email].

26. Authority and Signatures

IN WITNESS WHEREOF, parties have executed this Agreement as of the date of signature below.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Superintendent of Insurance

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Chief of Staff, Public Regulation Commission

By: \_\_\_\_\_ Date: \_\_\_\_\_  
PRC Legal Counsel – Certifying legal sufficiency

By: \_\_\_\_\_ Date: \_\_\_\_\_  
State Treasurer

By: \_\_\_\_\_ Date: \_\_\_\_\_  
State Treasurer’s Legal Counsel – Certifying legal sufficiency

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Contractor

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

ID Number: **00-000000-00-0**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Taxation and Revenue Department

## **Attachment 1**

### **A. Scope of Work**

#### **Performance Measures**

Goal: Administer all statutory deposits in accordance with Articles 5 and 10 of the New Mexico Insurance Code, Chapter 59A NMSA 1978.

Objective: Contract for a qualified custodian as permitted by § 59A-10-5.

## ACKNOWLEDGEMENT OF RECEIPT FORM

### APPENDIX A

#### CUSTODIAN TO ACT AS DEPOSITORY

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that he/she has received a complete copy, beginning with the title page and table of contents, and ending with Appendix D.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than **4:00 PM, Mountain Daylight Saving Time, on March 29, 2012.** (Facsimile and PDF submissions are acceptable if the sender confirms receipt by e-mail or telephone with the Procurement Manager.) Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all Offeror written questions and STO's written responses to those questions as well as RFP amendments, if any are issued.

FIRM: \_\_\_\_\_

REPRESENTED BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

PHONE NO.:(\_\_\_\_)\_\_\_\_\_ FAX NO.: (\_\_\_\_)\_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

E-MAIL ADDRESS  
(REQUIRED)\_\_\_\_\_

CIRCLE ONE:

Firm DOES/DOES NOT intend to respond to this Request for Proposals.

Return completed form to:

Ashley Hernandez, Federal Ombudsman  
NMPRC, Insurance Division  
P.O. Box 1269  
Santa Fe, NM 87504-1269  
[AshleyD.Hernandez@state.nm.us](mailto:AshleyD.Hernandez@state.nm.us)  
Telephone: (505) 827-4465  
Fax: (505) 476-0326

**APPENDIX B**  
**SCOPE OF WORK**

The Contractor shall perform the work outlined in the Scope of Work as follows:

The Custodian is designated as depository for Insurers with respect to securities and other properties in the Custodial Accounts. The Custodian has authority to make purchases, sales, and deliveries of securities and to otherwise deal with such securities as the Superintendent or the Trustee may direct.

The Custodian is designated as the depository for Service Contract Providers (“Providers”) who choose to enter into separate Provider Custodial Account Agreements with the Custodian for the deposit of securities of the type eligible for deposit by insurers under the New Mexico Insurance Code. The Custodian shall perform the following services, which shall also be terms of each Provider Custodial Account Agreement.

The Custodian is authorized and directed to:

- A. Act as depository with respect to securities and other properties in the Custodial Accounts.
- C. Make purchases, sales, and deliveries of securities and otherwise deal with such securities as the Superintendent may direct.
- D. Collect interest and other income on the securities, dispose of the interest and other income as directed by Insurers or Providers, provide the Superintendent with information regarding interest collections and payments, including addresses used by the Custodian to distribute interest payments, and provide information regarding past interest payments at the request of Insurers or the Superintendent.
- F. Provide to the Superintendent and Insurers or Providers the reports required by the Insurance Code and Regulations, including a monthly report containing a full description of the accounts held at each month’s end, each Insurer’s account number and company code, full descriptions of the securities held, and current market values and current par values of the securities held.
- G. Provide the Superintendent, the Trustee, and the State Auditor with all reports and records as may be reasonable or necessary for the performance of their duties under the law.
- G. Hold securities according to the provisions of the Insurance Code and Regulations, use descriptions/references for all securities as set by the Superintendent, ensure that all accounts reflect the Insurer’s New Mexico Company Code and account number or the Providers New Mexico Registration Number and account number, and provide the Superintendent with Standard and

Poor's Ratings, Moody's Rating, call information, and current market value within one day of a request for such information.

- O. Execute on behalf of Insurers, Providers or the Superintendent all declarations, affidavits and certificates of ownership now or hereafter required in collecting income or principal payments.
- P. Provide Insurers or Providers with written confirmation, which has been approved by the Superintendent, of the change in custodian bank and of the current account balance at the beginning of service by the Custodian.
- Q. Provide Insurers or Providers with transaction reports and lists of assets in Custodial Accounts annually and other available information regarding their respective accounts upon request.
- R. Process mail deliveries on a daily basis.
- S. Maintain an adequate customer service staff for all custodial accounts (i.e. more than one individual associated with the Custodian shall be familiar with the custodial accounts and processes necessary to keep them and, to the extent possible, individuals who specialize in investments shall be assigned to work with the custodial accounts).
- T. Provide the Superintendent with computers to access Contractor's custodial accounts online, including the ability to view and print account information, and appoint a qualified individual to manage any necessary computer conversion operations as well as day-to-day computer-related issues.
- U. Indemnify the Superintendent for any and all loss, damage, cost, expenses (including legal fees and expenses), and liability resulting from errors, omissions, fraud, embezzlement, theft, negligence, or neglect by Custodian, its employees, officers, servicers or agents and directors, in the performance of services relating to the custodial accounts. (The Custodian does not undertake to furnish investment advice with respect to any purchase or sale of securities held in Custodial Accounts. In reporting to the Superintendent the fair market values of securities held, the Custodian shall use its best efforts in obtaining, but does not warrant, the accuracy of values of securities included in any report.)
- V. Release securities or proceeds from a custodial account only upon written order signed by the Superintendent or his designee, and deliver securities or proceeds withdrawn from a Custodial Account pursuant to the instructions of the Insurer or Provider.
- O. Bill and collect custodial fees from Insurers as authorized by the Insurance Code and Regulations.

- P. Bill and collect custodial fees from Providers as provided in the Provider Custodial Account Agreements.

Performance Measures, default by Contractor – Contractor shall substantially perform the Performance Measures set forth in **Attachment 1**. In the event the Contractor fails to obtain the results described in **Attachment 1**, the Agency may provide written \_\_\_\_\_ to \_\_\_\_\_ Contractor.

## APPENDIX C

### CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

**“Applicable public official”** means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.



**“Campaign Contribution”** means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official’s behalf for the purpose of electing the official to statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

**“Family member”** means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor.

**“Pendency of the procurement process”** means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

**“Prospective contractor”** means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or a small purchase contract.

**“Representative of a prospective contractor”** means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

Name(s) of Applicable Public Official(s) if any:

Commissioner Jason A. Marks  
Commissioner Patrick H. Lyons  
Commissioner Douglas J. Howe  
Commissioner Theresa Becenti-Aguilar  
Commissioner Ben L. Hall  
State Treasurer James B. Lewis

**DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:**

Contribution Made By: \_\_\_\_\_

Relation to Prospective Contractor: \_\_\_\_\_

Date Contribution(s) Made: \_\_\_\_\_

Amount(s) of Contribution(s)

Nature of Contribution(s)

Purpose of Contribution(s)

(Attach extra pages if necessary)

Signature

Date

Title (position)

**--OR--**

**NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE** to an applicable public official by me, a family member or representative.

Signature

Date

Title (Position)